

Waivers	First Name	Last Name	Claim Number
			W-17-0011
Amount	OGC Received Date	Assigned To	Assigned Date
\$16299.33	08/17/2017	Ann Sisson	08/17/2017
EPA Decision	EPA Decision Date	Amount Approved	Status
DENIED	08/10/2018	CLOSED	
Appeal	Comments		
No	Note - waiver denied; but debt terminated for other reasons		
	Re-opened and denied 8/10/18 - interest to be waived per decision		
Type			
Pay Cap Exceeded			

Attachments

From: Redden, Kenneth
 Sent: Friday, August 10, 2018 11:41 AM
 To: [REDACTED]
 Cc: Gray, Richard <Gray.Richard@epa.gov>; Stewart, Leonice <Stewart.Leonice@epa.gov>; Saunders, Pam <Saunders.Pam@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>; Mazakas, Pam <Mazakas.Pam@epa.gov>; Cavanaugh, Charles <Cavanaugh.Charles@epa.gov>
 Subject: Decision on Re-opened Waiver Decision - W-17-0011

Dear [REDACTED],

As you are aware, on June 4, 2018 I informed you that I was re-opening the above-referenced waiver matter (Waiver Decision, W-17-0011, November 1, 2017, in the amount of \$16,299.33). In that November 1, 2017 decision, I denied your waiver request because I found that you were reasonably aware that the large lump sum payment you received in January 2017 may have been erroneous. See Comp. Gen. B-243002 (July 11, 1991) and Comp. Gen B-246967 (June 2, 1992) (denying waiver of erroneous pay in excess of pay cap even though employees received assurances from employer that payments were not erroneous).

However, I terminated the debt based on additional information this office received while working with the Office of Criminal Enforcement, Forensics and Training (OCEFT) and the Office of the Chief Financial Officer (OCFO) in investigating the erroneous overpayment. Briefly stated, the information indicated that, through systematic reductions of your 2017 bi-weekly pay, the lump sum payment received in early 2017 would effectively result in your having paid back the established debt before the end of calendar year 2017, such that no debt amount would be recoverable. In other words, you would not have exceeded the annual pay

cap in either calendar year 2016 or 2017. Based on that information, I found that the cost of further collection action was likely to exceed the amount recoverable, which would have been \$0, such that the debt should be terminated, pursuant to 31 U.S.C. §§ 3711 et seq. and 40 C.F.R. § 13.32.

Based on a teleconference call with the Interior Business Center (IBC) and OCFO on July 25, 2018, this office confirmed that in fact there were no systematic reductions of your 2017 bi-weekly pay taken in order to account for the erroneous January 2017 overpayment. Rather, IBC retroactively applied the 2017 lump sum payment to your 2016 pay, as required by payroll regulation 5 C.F.R. § 106(f). As a result of this retroactive application, you effectively received the lump sum payment in 2016 and therefore exceeded the mandatory annual pay cap in 2016. Your 2017 bi-weekly pay was unaffected by the lump sum payment applied to the previous year.

Based on this new evidence, I find that the rationale for debt termination in my November 1, 2017 decision is inconsistent with what actually happened. Namely, you did exceed the annual salary cap in 2016, and no systematic reductions in your 2017 pay were taken. As a result, I can no longer find that the debt should be terminated because the cost of further collection action is likely to exceed the amount recoverable, pursuant to 31 U.S.C. §§ 3711 et seq. and 40 C.F.R. § 13.32. In this regard, I am vacating that portion of my November 1, 2017 decision. OCFO should work with IBC to pursue collection of this debt. You have the right to request reconsideration of the denial of this claim. In a request for reconsideration, you must present new factual information that might cause the Claims Officer to overturn the prior decision.

Under 40 C.F.R. §13.11(c) (iii), I have the delegated authority to waive all or part of the interest, penalty, and administrative charges which have accrued on this debt. In this regard, I am directing the IBC to waive any portion of the debt that will be collected attributable to interest, penalty, and/or administrative charges.

Thank you.

From: Redden, Kenneth

Sent: Monday, June 04, 2018 12:34 PM

To: [REDACTED]

Cc: Gray, Richard <Gray.Richard@epa.gov>; Stewart, Leonice <Stewart.Leonice@epa.gov>; Saunders, Pam <Saunders.Pam@epa.gov>; Sisson,

Ann <Sisson.Ann@epa.gov>

Subject: RE: Waiver Decision - W-17-0011

[REDACTED],

This email is to inform you that, as the Acting Agency Claims Officer, I have decided to re-open this case (Waiver Decision, W-17-0011, in the amount of \$16,299.33). It has come to my attention that the facts upon which I relied in making my decision on 11/01/17 may not have been accurate. Specifically, I am re-examining whether the annual premium pay cap was exceeded in 2016 or 2017 and, if so, whether your biweekly payments in subsequent years were adequately reduced to compensate for the exceedance.

I intend to issue a decision within the next 30 days. If you have any information you feel would be relevant to my decision, please send it to me immediately. Thank you.

From: Redden, Kenneth

Sent: Wednesday, November 01, 2017 10:50 AM

To: [REDACTED]

Cc: Gray, Richard <Gray.Richard@epa.gov>; Stewart, Leonice <Stewart.Leonice@epa.gov>; Saunders, Pam <Saunders.Pam@epa.gov>; Sisson, Ann <Sisson.Ann@epa.gov>

Subject: Waiver Decision - W-17-0011

Dear [REDACTED]:

This email is in response to your July 19, 2017 letter requesting a waiver of repayment in the amount of \$16,299.33. For the reasons set forth herein, your request for waiver is denied. However, because I find that the debt has effectively been paid and that the cost of further collection action is likely to exceed the amount recoverable, the debt is hereby terminated, pursuant to 31 U.S.C. §§ 3711 et seq. and 40 C.F.R. § 13.32.

Briefly stated, in January 2017, you received a lump sum payment of \$16,299.33 in addition to your normal bi-weekly pay. The lump sum, it turns out, reflected overtime, night differential, and other irregular hours that were scheduled, preapproved, and worked in 2016 while you served as the [REDACTED]

[REDACTED] At the time you received the lump sum payment, you wisely contacted your management and questioned whether it was a valid and

correct payment. The subject of biweekly and annual pay caps had been an ongoing unresolved issue within the Agency. You and your management had received inconsistent guidance and had been unable to secure a definitive conclusion from OCFO as to whether you were entitled to receive pay in excess of the statutorily-prescribed annual premium pay cap.

After an audit was performed, it was determined by both the Interior Business Center (IBC) and EPA OCFO that the annual premium pay cap cannot legally be exceeded and may not roll over into the following calendar year. Rather, an employee forfeits any additional compensation once he or she hits that year's pay ceiling, notwithstanding that he or she was ordered to perform additional work. See 2014 OPM Dec. LEXIS 16; Comp. Gen. B-178117 (May 1, 1973); B-229089 (Dec. 28, 1988); and B-240200 (December 20, 1990). You were not previously compensated for these additional hours in 2016 because you would have improperly exceeded the annual limitation on premium pay set forth at 5 U.S.C. 5547(b) and 5 C.F.R. 550.106. Due to a processing mistake in early 2017, however, the excess amount was subsequently paid to you in error, instead of blocked, because the payroll system did not register you as having met the annual cap in what was now the following year, 2017.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he or she was being overpaid. B-271308, April 18, 1996. In the present case, I find that the erroneous payment was caused by administrative error. Therefore, the only issue before me is whether you knew or should have known that you were receiving more pay than you were entitled to receive.

In this case, my review of the record and my discussions with OCFO and OCEFT indicate that, while you did not know for certain you were being overpaid, you were reasonably aware that this large lump sum payment may have been erroneous. Indeed, you prudently brought the payment to the attention of your supervisors so that you could determine whether it was something you were entitled to retain. Your management properly advised that the amount should be set aside by you until a determination could be made as to whether it was an erroneous payment. As such, I cannot find that the standards for issuing a waiver have been met in this instance. See Comp. Gen. B-243002 (July 11, 1991) and Comp. Gen. B-246967 (June 2, 1992) (denying waiver of erroneous pay in excess of pay cap even though employees received assurances from employer that payments were not

erroneous).

I find, however, that as a practical matter, further collection action by the Agency would be costly and time-consuming, yet will not yield any net recoverable amount. This is because based upon your hours worked this year, your total salary earned in 2017 will also be limited by the annual cap. Presently, your biweekly payments have been reduced to ensure that you will not exceed the annual limit of \$161,900.00. If you were to return the erroneous payment at this point, the result is that your total 2017 income to date would effectively be reduced by that amount. As such, you would be entitled to receive that amount back by adjusting all of this year's bi-weekly payments until you hit the 2017 premium pay ceiling. According to OCFO, this would require a complex and time-consuming audit, because there have been systemic reductions by IBC over the past year to account for the January lump sum payment. The reductions in your salary over the year have effectively resulted in your already paying back any debt. You have not been unjustly enriched. Again, going through that exercise would not result in any amounts recovered by the Agency. Rather, at the end of the day, you will still have received a salary that did not exceed the annual pay cap in either 2016 or 2017.

Accordingly, I find that the cost of further collection action is likely to exceed the amount recoverable, and the debt is hereby terminated, pursuant to 31 U.S.C. §§ 3711 et seq. and 40 C.F.R. § 13.32. In this regard, OCFO should work with IBC to close out this debt.

If you have any questions, please contact Ann Sisson of this office at (202) 564-5469.